

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration because it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 12, 2013 appellant, then a 27-year-old postal support employee clerk, filed a traumatic injury claim (Form CA-1) alleging an injury to his left shoulder on September 6, 2012 after lifting and pitching parcels into designated locations while in the performance of duty.

By decision dated March 29, 2013, OWCP denied the claim, finding that, while the September 6, 2012 employment incident had occurred as alleged, the medical evidence of record was insufficient to establish left shoulder, cervical, and/or thoracic conditions causally related to the accepted employment incident.

On May 9, 2013 appellant requested reconsideration and submitted additional medical evidence.

By decision dated August 2, 2013, OWCP denied modification of its prior decision.

On May 20, 2014 appellant requested reconsideration and submitted additional evidence in support of his claim.

By decision dated August 29, 2014, OWCP denied modification of its prior decision. Appellant, through counsel, then appealed to the Board.

By decision dated April 16, 2015, the Board affirmed OWCP's August 29, 2014 decision finding that the medical evidence of record was insufficient to establish that appellant's medical conditions were caused or aggravated by the accepted September 6, 2012 employment incident.

On April 12, 2016 appellant requested reconsideration and submitted additional medical evidence.

By decision dated June 15, 2016, OWCP denied modification of its prior decision. It found that the evidence submitted did not explain how the claimed work factors would have resulted in the diagnosed conditions. Appellant, through counsel, then appealed to the Board on July 19, 2016.

³ Docket No. 19-0604 (issued September 13, 2019); Docket No. 16-1518 (issued May 5, 2017); Docket No. 15-0256 (issued April 16, 2015).

By decision dated May 5, 2017, the Board affirmed OWCP's June 15, 2016 decision again finding that the medical evidence was insufficient to establish causal relationship.⁴

On August 22, 2017 appellant requested reconsideration.

By decision dated November 20, 2017, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant a merit review.

OWCP subsequently received a March 29, 2018 report from Dr. John Champlin, a Board-certified family practitioner, who opined that appellant's diagnosed conditions of a compression fracture of the cervical spine, left shoulder anterior labral tear, left shoulder joint derangement, acquired deformity of the spine, and left shoulder muscle spasms were causally related to lifting and pitching mail at work on September 6, 2012.

On June 6, 2018 appellant requested reconsideration arguing that his request for reconsideration was not actually untimely because it had been mailed on April 20, 2018 from Citrus Height, California, by certified Priority Mail, to San Francisco, California on April 24, 2018.

By decision dated August 29, 2018, OWCP summarily denied appellant's request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant subsequently appealed to the Board on March 21, 2019 and resubmitted the March 29, 2018 report from Dr. Champlin.

By decision dated September 13, 2019, the Board set aside OWCP's prior August 29, 2018 decision and remanded the case for an appropriate decision on appellant's untimely request for reconsideration because it had not discharged its responsibility to set forth findings of fact and a clear statement of reasons for its disposition.

By decision dated October 15, 2019, OWCP denied appellant's June 6, 2018 request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that, while he had submitted evidence, the evidence was a package that he mailed *via* certified Priority Mail to a San Francisco, California address on April 20, 2018. OWCP further noted, however, that requests for reconsideration were to be sent to its central mailroom in London, Kentucky. Therefore, the mail sent to San Francisco, California, which included appellant's request for reconsideration, was forwarded to London, Kentucky for processing and was not received until June 6, 2018. OWCP also explained that, while appellant requested reconsideration of the Board's May 5, 2017 decision, it did not have jurisdiction over Board decisions and

⁴ The Board notes that OWCP is not authorized to review Board decisions. Board decisions are not subject to review except by the Board and they become final after 30 days. Although the May 5, 2017 Board decision was the last merit decision of record, OWCP's June 15, 2016 denial of modification is the appropriate subject of possible modification by OWCP. *See* 20 C.F.R. § 501.6(d).

therefore, was only able to conduct a limited review of its May 15, 2016⁵ decision denying modification of its prior decision.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.⁶ This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁷ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).⁸ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁹

OWCP may not deny a reconsideration request solely because it was untimely filed. When a claimant's application for review is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.¹⁰ If an application demonstrates clear evidence of error, OWCP will reopen the case for merit review.¹¹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to *prima facie* shift the

⁵ This appears to be an error and should have read June 15, 2016 as there is no OWCP decision of record dated May 15, 2016.

⁶ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁹ *R.L.*, Docket No. 18-0496 (issued January 9, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Fairley, Jr.*, 41 ECAB 104 (1989).

¹⁰ See 20 C.F.R. § 10.607(b); *G.G.*, Docket No. 18-1074 (issued January 7, 2019); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

¹¹ *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). See also *id.* at § 10.607(b); *supra* note 8 at Chapter 2.1602.5 (February 2016).

weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹²

OWCP procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face shows that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹³ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁴

ANALYSIS

The Board finds that OWCP properly denied appellant's request of reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

OWCP received appellant's request for reconsideration on June 6, 2018, which was more than one year after the Board's May 5, 2017 merit decision which had affirmed OWCP's June 15, 2016 decision. The one-year period for requesting reconsideration began on the date of the original OWCP decision, but the right to reconsideration within one year also accompanies any subsequent merit decision on the issues, including any merit decision by the Board.¹⁵ As appellant's request was untimely filed, he must demonstrate clear evidence of error on the part of OWCP.¹⁶

The Board finds that appellant has not demonstrated clear evidence of error. The underlying issue is whether OWCP properly denied his traumatic injury claim because the evidence of record was insufficient to establish that his left shoulder, cervical, and/or thoracic spine conditions were causally related to the accepted September 6, 2012 employment incident. The Board finds that the arguments and evidence submitted by appellant in support of his request for reconsideration did not raise a substantial question as to the correctness of the denial of his claim.

In support of his request for reconsideration, appellant submitted a statement dated June 6, 2018 arguing that he had sustained multiple injuries on February 12, 2013 due to lifting and pitching parcels into designated locations while in the performance of duty. The Board finds that his narrative statement merely reiterates the arguments previously of record. Appellant also submitted a medical report from Dr. Champlin dated March 29, 2018. The Board finds that Dr. Champlin's report does not demonstrate clear evidence of error because it does not demonstrate that OWCP committed an error in denying appellant's traumatic injury claim, nor raise a substantial question as to the correctness of OWCP's decision. Thus, the Board finds that

¹² *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

¹³ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 8 at Chapter 2.1602.5(a) (February 2016).

¹⁴ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁵ *Supra* note 8 at Chapter 2.1602.4a (February 2016); *see also U.C.*, *supra* note 11.

¹⁶ 20 C.F.R. § 10.607(b).

the evidence and arguments submitted on reconsideration do not demonstrate clear evidence of error on the part of OWCP in its June 15, 2016 merit decision.¹⁷

The term clear evidence of error is intended to represent a difficult standard. None of the evidence submitted demonstrates on its face that OWCP committed an error in denying appellant's claim for a traumatic injury in its June 15, 2016 decision. Appellant has not otherwise submitted evidence of sufficient probative value to raise a substantial question as to the correctness of the Board's May 5, 2017 decision affirming OWCP's June 15, 2016 merit decision. Thus, the evidence is insufficient to demonstrate clear evidence of error.¹⁸

For these reasons, the Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration because it was untimely filed and failed to demonstrate clear evidence of error.

¹⁷ *W.R.*, Docket No. 18-1042 (issued February 12, 2019).

¹⁸ *S.D.*, Docket No. 17-1450 (issued January 8, 2018).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board